

S.3629

POWER Act (Introduced in Senate)

S 3629 IS

109th CONGRESS
2d Session
S. 3629

To require a 50-hour workweek for Federal prison inmates, to reform inmate work programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 29, 2006

Mr. ENSIGN (for himself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require a 50-hour workweek for Federal prison inmates, to reform inmate work programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Prisoner Opportunity, Work, and Education Requirement Act' or the 'POWER Act'.

SEC. 2. MANDATORY WORK REQUIREMENT FOR FEDERAL INMATES.

Section 2905 of the Crime Control Act of 1990 (18 U.S.C. 4121 note) is amended by adding at the end the following:

`(b) 50-Hour Workweek-

 `(1) IN GENERAL- Subject to subsection (a), inmates confined in Federal prisons shall engage in--

 `(A) work, for not less than 50 hours weekly;

 `(B) job training; and

 `(C) educational and life skills preparation study.

`(2) SUBCONTRACTING TO FEDERAL GOVERNMENT

CONTRACTORS- Federal Prison Industries will utilize inmates in labor-intensive, light manufacturing activities through subcontracting with private sector prime contractors.

`(3) USE OF WAGES-

`(A) IN GENERAL- Wages may be earned by inmates engaged in the 50-hour work week program under paragraph (1), and of those wages--

`(i) one-fourth shall be used to offset the cost of incarceration of the inmate;

`(ii) one-fourth shall be used for victim restitution;

`(iii) one-tenth shall be held in a noninterest bearing account for the individual inmate and shall be paid upon release of that inmate from prison;

`(iv) one-fourth shall be paid directly to the inmate for mandatory expenses and for daily basic needs while the inmate is incarcerated, unless such inmate has any outstanding child support obligations, in which case, such money shall be paid in accordance with the directives of the court having jurisdiction over the outstanding child support obligations; and

`(v) the remainder shall be distributed to--

`(I) States that the Attorney General determines have substantially the same prison work requirements and prison conditions as established for Federal prisons; and

`(II) local jurisdictions that operate correctional facilities to benefit the dependents of inmates.

`(B) NONELIGIBILITY FOR RELEASE- If an inmate is not eligible for release, the amount held under subparagraph (A)(iii) shall immediately be available for use under subparagraph (A)(ii).'

SEC. 3. FEDERAL PRISON INDUSTRIES REAUTHORIZATION.

(a) Repeal- Section 637 of division F of the Consolidated Appropriations Act of 2004 (Public Law 108-199; 118 Stat. 3, 384), section 637 of division H of the Consolidated Appropriations Act of 2005 (Public Law 108-447; 118 Stat. 2809, 3281), and section 2410n of title 10, United States Code, are repealed.

(b) Effective- Chapter 307 of title 18, United States Code, shall remain in full force and effect.

SEC. 4. AUTHORITY TO CARRY OUT PILOT PROJECTS USING FEDERAL INMATE LABOR TO REPLACE FOREIGN LABOR.

(a) Foreign Labor Substitute Pilot Projects Authorized- Section 1761 of title 18, United States Code, is amended--

- (1) in subsection (b), by striking 'This chapter' and inserting 'This section';
- (2) in subsection (c), by striking 'this chapter' and inserting 'this section';
- (3) by redesignating subsection (d) as subsection (f); and
- (4) by adding after subsection (c) the following new subsections:
 - `(d) This section shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who are participating in industrial operations of Federal Prison Industries, including operations in any pilot program or programs described in section 4130 of this title.
 - `(e) This section shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who are participating in any pilot project approved as a foreign labor substitute by the Foreign Labor Substitute Panel established under section 1762.'
- (b) Foreign Labor Substitute Panel-
 - (1) IN GENERAL- Section 1762 of title 18, United States Code, is amended to read as follows:

`Sec. 1762. Foreign Labor Substitute Panel

- `(a) The Attorney General shall establish a panel to be known as the Foreign Labor Substitute Panel (in this section referred to as the 'Panel').
- `(b) The Panel shall be composed of 8 members, each of whom shall serve at the pleasure of the Attorney General, and who shall be appointed by the Attorney General as follows:
 - `(1) 1 member who shall be an officer, employee, or other representative of the Department of Commerce.
 - `(2) 1 member who shall be an officer, employee, or other representative of the Department of Labor.
 - `(3) 1 member who shall be an officer, employee, or other representative of the International Trade Commission.
 - `(4) 1 member who shall be an officer, employee, or other representative of the Small Business Administration.
 - `(5) 2 members, each of whom shall be an officer, employee, or other representative of the business community.
 - `(6) 2 members, each of whom shall be an officer, employee, or other representative of organized labor.
- `(c)(1) Members of the Panel shall not receive pay, allowances, or benefits by reason of their service on the Panel.
- `(2) Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.
- `(d) The Panel shall review proposals for pilot projects submitted to the Panel. For each proposal reviewed, the Panel shall approve the pilot project as a foreign labor substitute if, and only if, the Panel determines that the pilot project specified in the proposal satisfies each of the following requirements:
 - `(1) The pilot project is to be carried out by 1 or more private United States companies.

`(2) The goods, wares, or merchandise proposed to be manufactured, produced, or mined wholly or in part by Federal convicts or prisoners under the pilot project would otherwise be manufactured, produced, or mined by foreign labor.

`(e) Any determination of the Panel under subsection (d) shall be made available to the public upon request.'

(2) CHAPTER ANALYSIS- The item relating to section 1762 in the chapter analysis for chapter 85 of title 18, United States Code, is amended to read as follows:

`1762. Foreign Labor Substitute Panel.'

SEC. 5. RESTATEMENT AND IMPROVEMENT OF FEDERAL PRISON INDUSTRIES PROGRAM.

(a) In General- Sections 4121, 4122, and 4123 of title 18, United States Code, are amended to read as follows:

`Sec. 4121. Federal Prison Industries: status, mission, and management

`(a) Status- Federal Prison Industries is a Government corporation. The headquarters of the corporation is in the District of Columbia.

`(b) Mission- The mission of Federal Prison Industries is to carry out industrial operations in accordance with this chapter using eligible inmate workers.

`(c) Board of Directors-

`(1) IN GENERAL- Federal Prison Industries shall be administered by a board of 6 directors, appointed by the President to serve at the will of the President without compensation.

`(2) REPRESENTATION- The directors shall be representatives of 1 of the following:

`(A) Industry

`(B) Labor.

`(C) Agriculture.

`(D) Retailers and consumers.

`(E) The Secretary of Defense.

`(F) The Attorney General.

`Sec. 4122. Federal Prison Industries: operating objectives, standards, and requirements

`(a) Operating Objectives- Federal Prison Industries shall carry out its industrial operations so as to achieve each of the following objectives:

`(1) To increase public safety by reducing the rate of recidivism by providing as many inmates as possible with an opportunity to gain meaningful employment and vocational skills and improve their chances of becoming productive and law-abiding citizens after release from prison.

- `(2) To minimize any adverse effects of the operations on domestic companies or workers.
- `(3) To provide meaningful employment and vocational training for not less than 25 percent of eligible inmate workers.
- `(4) To provide inmate workers with a source of income with which they may facilitate their ability to contribute to the discharge of their financial obligations.
- `(5) To generate sufficient revenue to fund those operations.
- `(6) To provide products and services that are market quality and competitively priced.

`(b) Performance Standards- Federal Prison Industries shall carry out its industrial operations in compliance with the following standards, as applicable to correctional industry programs:

- `(1) Federal standards.
- `(2) American Correctional Association standards.
- `(3) International Labor Organization conventions to which the United States is a signatory party.

`(c) Voluntariness- Federal Prison Industries shall carry out its industrial operations only with inmate workers who participate in those operations voluntarily.

`(d) Wage Rates- Unless otherwise provided by law, each inmate worker participating in the industrial operations of Federal Prison Industries shall be paid at a wage rate prescribed by the Board of Directors of Federal Prison Industries.

`(e) Protection of Certain Information- Federal Prison Industries shall carry out its industrial operations so as to ensure that, in the production of a product or the performance of a service, inmate workers do not have access to--

- `(1) personal or financial information about any citizen of the United States without prior notice of the access being provided to that citizen, including information relating to the citizen's real property, however described, unless that information is publicly available; or
- `(2) information that is classified in the national security or foreign policy interests of the United States.

`(f) Vocational Training- At the end of each fiscal year, Federal Prison Industries shall, if the Board of Directors determines that it is financially feasible to do so, contribute not less than 20 percent of its net profits for that fiscal year to provide for the vocational training of inmates without regard to their industrial or other assignments.

`(g) Exemption From Public Contracting and Procurement Laws- Federal Prison Industries is exempt from all laws and regulations governing public contracting and the procurement of property or services by an agency of the Federal Government.

`(h) Liability- The sole remedy for injury, death, or loss resulting from negligence in the design or production of a product, or in the performance of a service, by Federal Prison Industries shall be as follows:

- `(1) In the case of a person suffering an injury, death, or loss in the performance of duties as an employee of the United States, chapter 81 of title 5, relating to compensation for work-related injuries.
- `(2) In all other cases, chapter 171 of title 28, relating to tort claims.

`Sec. 4123. Federal Prison Industries: transactions authorized

- `(a) Sales of Certain Commodities- Federal Prison Industries may carry out a program to manufacture commodities specified in section 1761(b).
- `(b) Participation in Foreign Labor Substitute Pilot Projects- Subject to the requirements in subsection (e), Federal Prison Industries may make available inmate workers for participation in a pilot project approved as a foreign labor substitute by the Foreign Labor Substitute Panel, as referred to in section 1761(e).
- `(c) Participation in BJA Pilot Projects-
 - `(1) IN GENERAL- Subject to the requirements in subsection (e), Federal Prison Industries may make available inmate workers for participation in a pilot project designated by the Director of the Bureau of Justice Assistance, as referred to in section 1761(c).
 - `(2) WAGE RATE- Each inmate worker participating in a pilot project specified in paragraph (1) shall be paid at a wage rate that complies with section 1761(c).
- `(d) Requirements for Contracts With Private Companies- In making available inmate workers for participation in a pilot project under subsection (c) or (d), Federal Prison Industries shall comply with the following requirements:
 - `(1) The inmate workers shall be made available through a contract between Federal Prison Industries and a private United States company.
 - `(2) The contract shall--
 - `(A) require that the labor performed by the inmate workers shall be carried out at a Federal Prison Industries facility;
 - `(B) include a provision that prohibits the company from displacing any of that company's existing domestic workers as a direct result of the contract with Federal Prison Industries; and
 - `(C) provide that any workforce reductions carried out by the company affecting employees performing work comparable to the work performed pursuant to the contract shall first apply to inmate workers employed pursuant to the contract.
- `(e) Goals for Certain Businesses- Federal Prison Industries shall, in consultation with the Small Business Administration, establish and strive to meet or exceed realistic goals for entering into contracts with one or more of the following:
 - `(1) A business concern that meets the applicable size standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).
 - `(2) A small business concern owned and controlled by socially and economically disadvantaged individuals, as that term is defined in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).
- `(f) Job Opportunities for Blind and Severely Disabled Individuals- Federal Prison Industries shall establish business partnerships with organizations representing

domestic workers who are blind or severely disabled, for the purpose of entering into contracts with private United States companies that would create job opportunities both for blind and severely disabled individuals and for Federal inmates.

- `(g) Donation of Products and Services- The Board of Directors may authorize--
 - `(1) the donation of a product or service of Federal Prison Industries that is available for sale; or
 - `(2) the production of a new product, or the performance of a new service, for donation.
- `(h) Catalog- Federal Prison Industries shall publish and maintain a catalog of all products and services that it offers for sale to government agencies and not-for-profit organizations. The catalog shall be periodically revised as products and services are added or deleted.'
- (b) Conforming Amendment- Section 1761(c)(1) of such title is amended by striking `non-Federal'.
- (c) Clerical Amendment- The chapter analysis for chapter 307 of title 18, United States Code, is amended by striking the items relating to sections 4121, 4122, and 4123 and inserting the following:
 - `Sec. 4121. Federal Prison Industries: status, mission, and management.
 - `Sec. 4122. Federal Prison Industries: operating objectives, standards, and requirements.
 - `Sec. 4123. Federal Prison Industries: transactions authorized.'

SEC. 6. PERIODIC EVALUATION AND REPORTS.

(a) In General- Section 4127 of title 18, United States Code, is amended to read as follows:

`Sec. 4127. Periodic evaluation and reports

- `(a) Evaluation by GAO-
 - `(1) MATTERS EVALUATED- The Comptroller General shall provide for an independent evaluation of the operations of Federal Prison Industries to be carried out each year. The matters evaluated shall include the following:
 - `(A) The overall success of the operations.
 - `(B) The effects that any reduction in the purchases made under section 4124(a) has on the viability of Federal Prison Industries.
 - `(C) The extent to which Federal Prison Industries can successfully contract with private companies without adversely affecting domestic companies or workers.
 - `(D) The current status and effects of the pilot program or programs described in section 4130.
 - `(2) VIEWS INCLUDED- The Comptroller General shall ensure that, in the development of appropriate methodologies for the evaluation under paragraph (1), the views of the Foreign Labor Substitute Panel, private

industry, organized labor, the Board of Directors of Federal Prison Industries, and the public are solicited.

`(3) REPORT- Not later than March 31 of each fiscal year, the Comptroller General shall submit to Congress a report on the evaluation of the operations of Federal Prison Industries that was carried out under paragraph (1) for the preceding fiscal year. The report for a fiscal year shall, at a minimum, include the following:

`(A) The evaluation.

`(B) Any concerns raised about any adverse effects on domestic companies or workers, together with any actions taken in regard to the concerns.

`(C) The extent to which Federal Prison Industries maintained at least a 25 percent employment rate for eligible inmate workers.

`(D) The extent to which Federal Prison Industries conducted its operations on a financially self-sustaining basis.

`(E) Any recommended legislation to improve the administration of this chapter or the effects of the administration of this chapter, including any recommended legislation necessary to authorize remedial actions regarding--

`(i) any conduct of the operations of Federal Prison Industries in a manner that adversely affects domestic companies or workers (excluding the effects of normal competitive business practices);

`(ii) any failure of Federal Prison Industries to maintain at least a 25 percent employment rate for eligible inmate workers; or

`(iii) any failure of Federal Prison Industries to conduct its operations on a financially self-sustaining basis.

`(b) Annual Report by Board of Directors-

`(1) IN GENERAL- The Board of Directors of Federal Prison Industries shall, each year, report under section 9106 of title 31, on the conduct of the business of Federal Prison Industries and the condition of its funds during the preceding fiscal year.

`(2) MATTERS INCLUDED- In addition to the matters required by section 9106 of title 31, and such other matters as the Board considers appropriate, each report for a fiscal year under paragraph (1), shall include the following:

`(A) A statement of the amount of obligations issued under section 4129(a)(1) of this title during that fiscal year.

`(B) An estimate of the amount of obligations that will be issued under that section during the following fiscal year.

`(C) An analysis of--

`(i) the total sales by Federal Prison Industries for each product and service sold to Federal agencies and to private United States companies;

`(ii) the total purchases by each Federal agency of each product and service; and
` (iii) the Federal Prison Industries share of the total Federal Government purchases by product and service.

`(D) An analysis of the inmate workforce, including--

`(i) the number of inmates employed;
` (ii) the number of inmates used to produce products or perform services sold to private United States companies;
` (iii) the number and percentage of employed inmates, categorized by term of incarceration; and
` (iv) the various hourly wages paid to inmates engaged in the production of the various products and the performance of services authorized for production and sale to Federal agencies and to private United States companies.

`(E) Information concerning any employment obtained by former inmates upon release that is useful in determining whether the employment provided by Federal Prison Industries during incarceration provided those former inmates with knowledge and skill in a trade or occupation that enabled them to earn a livelihood upon release.

`(F) Information on the current status of the pilot program or programs described in section 4130.

`(3) AVAILABILITY TO PUBLIC- The Board of Directors shall make available to the public each report under this subsection.'

(b) Clerical Amendment- The item relating to section 4127 in the chapter analysis for chapter 307 of title 18, United States Code, is amended to read as follows:

`4127. Periodic evaluation and reports.'

SEC. 7. RULES OF CONSTRUCTION AND DEFINITIONS.

(a) In General- Chapter 307 of title 18, United States Code, as amended by section 4, is amended by adding at the end the following:

`SEC. 4131. CONSTRUCTION OF PROVISIONS.

`Nothing in this chapter shall be construed--

`(1) to establish an entitlement of any inmate to--

`(A) employment in a Federal Prison Industries facility; or

`(B) any particular wage, compensation, or benefit on demand;

`(2) to establish that inmates are employees for the purposes of any law or program; or

`(3) to establish any cause of action by or on behalf of any person against the United States or any officer, employee, or contractor thereof.

`SEC. 4132. DEFINITIONS.

`In this chapter:

`(1) The term `eligible inmate' or `eligible inmate worker' means a person who--

`(A) is committed to the custody of the Bureau of Prisons pursuant to section 3621 of this title;

`(B) is designated to a low, medium, or high security facility operated by the Bureau of Prisons; and

`(C) is physically and mentally able to work.

`(2) The term `private United States company' means a corporation, partnership, joint venture, or sole proprietorship with a principal place of business in the United States.'

(b) Clerical Amendment- The table of sections at the beginning of chapter 307 of such title is amended by adding at the end the following new items:

`Sec. 4131. Construction of provisions.

`Sec. 4132. Definitions.'

SEC. 8. CONFORMING AMENDMENT.

Section 436 of title 18, United States Code, is amended by striking `Whoever,' and inserting `Except as otherwise provided in this title, whoever,'.